

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

GREGG P. DORFNER

Plaintiff,

v.

McKINLEY & ASSOCIATES, INC.,
ERNEST DELLATORRE, DARREN S. DUSKEY,
And TIM E. MIZER,

Defendants.

Civil Action: 20-C-65
(Judge DJS)

COMPLAINT

Plaintiff Gregg P. Dorfner, by and through his attorney, complains and alleges as against defendants McKinley & Associates, Ernest Dellatorre, Darren S. Duskey, and Tim E. Mizer the following:

1. At all times material hereto plaintiff Gregg P. Dorfner ("Dorfner") is a resident of Ohio County, West Virginia.
2. Defendant McKinley & Associates, Inc. ("McKinley") is a West Virginia corporation with its principle place of business in Ohio County, West Virginia.
3. Defendant Ernest Dellatorre is a resident of Jefferson County, Ohio.
4. Defendant Darren S. Duskey is a resident of Belmont County, Ohio.
5. Defendant Tim E. Mizer is a resident of Harrison County, Ohio.
6. At all times relevant hereto defendants Dellatore, Duskey, and Mizer were employees of McKinley and trustees of the McKinley & Associates, Inc. Employee Stock Ownership Plan ("McKinley ESOP").
7. Jurisdiction and venue is proper for this civil action in Ohio County, West Virginia.
8. Plaintiff Dorfner was an employee of McKinley and retired from employment on

April 20, 2017.

9. Plaintiff Dorfner was a participant in the McKinley ESOP.

COUNT I- BREACH OF CONTRACT

10. Plaintiff restates his allegations in paragraphs 1-9 of this Complaint as if fully stated herein.
11. The McKinley ESOP constituted a contract between plaintiff Dorfner and defendants McKinley, Dellatorre, Duskey, and Mizer.
12. Plaintiff Dorfner on November 10, 2017 and December 1, 2017 made a diversification election with the McKinley ESOP in the amount of \$29,437.02. This election was completely ignored by the McKinley ESOP and the defendant trustees.
13. Defendant McKinley, and the defendant trustees had a contractual obligation under the McKinley ESOP to provide plaintiff with \$29,437.02 when plaintiff made his diversification election.
14. Defendants McKinley, Dellatorre, Duskey, and Mizer breached their contract with plaintiff by failing to pay out the \$29,437.02 requested by the plaintiff.
15. Plaintiff Dorfner was informed on June 27, 2018 that the McKinley ESOP was ending and that his shares in the McKinley ESOP were valueless. Plaintiff Dorfner was informed for the first time in correspondence dated June 27, 2018 that the December 31, 2017 valuation of his shares in the McKinley ESOP were worth nothing.
16. As a result of the breach of contract by the defendants, plaintiff Dorfner experienced damages in the amount of \$29,437.02 plus interest.

COUNT II- BREACH OF FIDUCIARY DUTY

17. Plaintiff restates his allegations from paragraphs 1-16 of the Complaint as if fully stated herein.
18. At all times relevant herein, defendants Dellatorre, Duskey, and Mizer were trustees of the McKinley ESOP and had a fiduciary duty to the participants in the McKinley ESOP of which plaintiff was in the class of participants.
19. Defendants Dellatorre, Duskey, and Mizer breached their fiduciary duty to the plaintiff by, included but not limited to, failing to properly manage the value of the McKinley ESOP, concealing information from participants regarding the value of the McKinley ESOP, engaging in imprudent financial transactions with the McKinley ESOP, allowing third parties to squander the assets of the McKinley ESOP, and failing to protect the assets of the McKinley ESOP.
20. As a result of the breach of fiduciary duty by defendants Dellatorre, Duskey, and Mizer, plaintiff lost all value in his shares of the McKinley ESOP and lost in excess of \$117,000.00.
21. The breach of fiduciary duty by defendants Dellatorre, Duskey, and Mizer against the plaintiff caused the plaintiff to experience damages in excess of \$117,000.00 and entitles the plaintiff to a judgment against these defendants.

COUNT III – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

22. Plaintiff restates his allegations from paragraphs 1-21 of the Complaint as if fully stated herein.
23. At all times defendant McKinley owed plaintiff a duty of good faith and fair dealing with respect to the administering and funding of the McKinley ESOP.

24. Defendant McKinley breached this duty of good faith and fair dealing owed to the plaintiff and engaged in bad faith to the detriment of the plaintiff and the other plan participants by, included but not limited to, by taking assets from the McKinley ESOP without authority, concealing information from participants regarding the value of the McKinley ESOP, engaging in imprudent financial transactions with the McKinley ESOP, allowing third parties to squander the assets of the McKinley ESOP, and failing to protect the assets of the McKinley ESOP.
25. As a result of the breach of this duty of good faith and fair dealing by defendant McKinley, plaintiff lost all value in his shares of the McKinley ESOP and lost in excess of \$117,000.00.
26. The breach of the duty of good faith and fair dealing defendant McKinley caused the plaintiff to experience damages in excess of \$117,000.00 and entitles the plaintiff to a judgment against this defendant.

WHEREFORE, the plaintiff Gregg P. Dorfner prays for judgment against defendants McKinley & Associates, Ernest Dellatorre, Darren S. Duskey, and Tim E. Mizer in an amount within the jurisdiction of this Court, in full compensation for all of the losses, expenses and damages encompassed by this Complaint, including pre-judgment and post-judgment interest, attorney fees and expenses, and for whatever other relief as would be appropriate under applicable law. The minimum jurisdictional amount established for filing this action is satisfied.

A JURY TRIAL ON ALL ISSUES IS DEMANDED.

Respectfully Submitted:



Counsel for Plaintiff Gregg P. Dorfner

David L. Delk, Jr. (#6883)
GROVE, HOLMSTRAND & DELK, PLLC
44 ½ 15th Street
Wheeling, WV 26003
(304) 905-1961
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CIVIL CASE INFORMATION STATEMENT

CIVIL CASES

In the Circuit Court of Ohio County, West Virginia

PLAINTIFF: Gregg P. Dorfner DEFENDANT: McKinley & Associates, Inc., Earnest Dellatorre, Darren S. Duskey, and Time E. Mizer	CASE NUMBER:
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II. TYPE OF CASE:

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ NoCASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): 12 / 2020**IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?** ☐ YES ☒ NO

IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities.
☐ Interpreter or other auxiliary aid for the hearing impaired.
☐ Reader or other auxiliary aid for the visually impaired.
☐ Spokesperson or other auxiliary aid for the speech impaired.
☐ Other: _____

Attorney Name: David L. Delk, Jr., Esq.

Representing:

Firm Name: Grove Holmstrand & Delk, PLLC ☒ Plaintiff ☐ DefendantAddress: 44 ½ 15th Street
Wheeling, WV 26003☐ Cross-ComplainantTelephone: (304) 905-1961☐ Cross-Defendant

Dated: March 18, 2020

/s/ David L. Delk

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

In the Circuit Court of Ohio County, West Virginia

I. CASE STYLE:

Plaintiff(s)

Case # _____

Gregg P. Dorfner
1 Greentree Road
Wheeling, WV 26003

Judge _____

vs.

Defendant(s)

Days to

Answer Type of Service

McKinley & Associates, Inc.
c/o David H. McKinley
2100 Market Street
Wheeling, WV 260003

30 Certified Mail
Delivery restricted to
Addressee

Ernest Dellatorre
122 Valuska Dr
Mingo Junction, OH 43938

Darren Duskey
70854 Crescent RD
Saint Clairsville, OH 43950

Tim Mizer
213 W Market St
Cadiz, OH 43907

Original and 4 copies of Complaint furnished herewith.